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J.I.R.B.: Focusing on Pennsylvania's Judiciary

On March 6, 1984, the Pennsylvania Crime Commission passed a resolution authorizing an investigation into the "manner in which officials and/or employees of the Judicial Inquiry and Review Board (J.I.R.B.) conduct the business of the Board."

Pursuant to the Constitution and laws of the Commonwealth of Pennsylvania, the J.I.R.B. has the responsibility to examine the conduct of justices and judges. It is empowered to conduct investigations and to hold hearings concerning their suspension, removal, discipline or compulsory retirement.

This investigation was initiated in part when in 1983 the Commission became aware of testimony given before the J.I.R.B. regarding the board's investigation of Supreme Court Justice Rolf Larsen. The testimony raised serious questions regarding misconduct, public corruption and criminality by public officials and others.

The testimony and other information and evidence obtained by the Commission also raised serious questions regarding the manner in which any and all complaints against justices and judges are submitted to, evaluated, investigated, heard and determined (preliminarily and formally) by the J.I.R.B.

As a result of the above information, the Crime Commission initiated a statewide investigation which examined conflicts of interest, violations of canons of ethics, criminality and other irregularities concerning the manner in which the J.I.R.B. conducted its business.

After the Commission initiated the investigation it received additional information alleging judicial misconduct at nearly all levels of the judicial system.

These allegations were received from individuals involved in court administration, law enforcement and the legal community. As a result of this information, several areas of serious concern have been uncovered and are currently being investigated. Additional significant information regarding J.I.R.B. procedure was received from former and current J.I.R.B. members.

Concurrent with the Commission's investigation, other groups and individuals voiced concern about the performance of the J.I.R.B.

In November of 1984 the Special Senate Committee on Judicial Conduct and Administration (also known as the Resolution 54 Committee) chaired by Senator Richard A. Snyder issued a report titled, "The Image of Justice."

In it, Sen. Snyder quotes former Chief Justice Richard Neeley of West Virginia:

"In the judiciary the appearance of impropriety is as reprehensible as the real thing." Snyder adds that many of the problems detailed by the Committee's work, *"give rise to a suspicion of impropriety and, if we do nothing, we will greatly harm the image of justice in Pennsylvania and ultimately endanger justice itself."*

Also testifying before this committee was Gilbert Nurick, former chairman of the Disciplinary Board of the Pennsylvania Supreme Court, a past president of the Pennsylvania Bar Association and a former professor at Dickinson Law School.

Nurick stated that double standards exist when it comes to disciplining members of the judiciary.

As an example, he cited a disparity between one case in which the Pennsylvania Supreme Court in 1979 overturned a J.I.R.B. recommendation that a Common Pleas Court judge be censured for alleged sexual misconduct and improper business activities and a subsequently adopted court ruling that stated lawyers can be disciplined for conduct whether or not it occurred "in the course of the attorney-client relationship."

Nurick also cited a case (Fabio vs. Civil Service Commission of Philadelphia) in which it was found that a policeman could be cited for "conduct unbecoming an officer" which was unrelated to his service.

Nurick stated: *"It takes real temerity for judges to declare that lawyers and policemen are bound by a higher code of conduct than is applicable to them."*

The Senate Committee report indicated *"there was also some concerns raised by the members of the committee that the J.I.R.B. dealt primarily with complaints against district judges and other members of the minor judiciary, while adopting a sort of clubby, laissez-faire attitude about complaints against the trial court and appellate judges."*

Moreover, in testimony before the committee, Robert B. Surrick, an attorney who was a member of the J.I.R.B. at the time of his testimony (August 1983) indicated at one point that the "Judicial In-

quiry and Review Board cannot function effectively and the public cannot know that it is functioning effectively as long as (the) constitutional requirement of confidentiality exists . . ."

Furthermore, Surrick placed great significance on the number of judges on the board, stating:

"I will say it here and I will say it to anybody who wants to listen, the plain fact of the matter is judges can't judge judges. There's too much of what I will call a circle of lagging mentality—too much of, this is my brother. Too much of it may be me next. Too much of all that kind of thing. It just does not work."

The Special Senate Committee reported its findings and recommendations to the full Senate in November of 1984.

On March 12, 1984, the Board of Governors of the Philadelphia Bar Association, in responding to the inadequacies of the Judicial Inquiry and Review Board, adopted the following resolution:

The Board of Governors of the Philadelphia Bar Association urges the General Assembly to enact the Constitutional Amendment providing for the following structural reforms affecting the Judicial Inquiry and Review Board ("Board"):

1. In cases in which the Board files charges against the judge after its preliminary investigation, at the conclusion of the proceedings, the Board shall make public its findings and conclusions and the record of the proceedings.

2. The Board should have its own independent counsel, an executive director and such other staff as it deems necessary.

3. After action by the Judicial Inquiry and Review Board, there shall be full appellate review by either the Board's independent counsel or the judge who is

charged, to the Supreme Court, unless the judge charged is a member of the Supreme Court, in which case a panel of seven judges from the Superior and Commonwealth Courts shall be selected by lot.

4. The Board should consist of three judges, three lawyers and three non-lawyers. Provision shall be made for appointment of alternate judges to sit on the Board so that no judge shall sit in judgment of another judge of his/her own court.

In addition to the Philadelphia Bar Association proposals, the Pennsylvania Senate has framed a number of bills aimed at reforming the manner in which allegations against members of the judiciary are handled.

The Crime Commission investigations relating to the J.I.R.B. continue although they have been severely hampered by resistance to subpoenas and resultant litigation stemming from a challenge of the Commission's subpoena enforcement powers.

Noted Charles Rogovin, a law professor at Temple University who served as special counsel to the Crime Commission during much of its J.I.R.B. probe:

"Review of the chronology of the treatment in the Commonwealth Court and by the Pennsylvania Supreme Court of critically important issues concerning the efficacy of the functioning of the Judicial Inquiry and Review Board, as well as the treatment of the entire question of the Pennsylvania Crime Commission's authority to enforce its subpoenas issued in furtherance of duly authorized investigative efforts and the possible insensitivity to the canons of judicial ethics by certain members of the Supreme Court lend further support to a growing public concern about the nature and quality of judicial activity in the Commonwealth."

“Public skepticism and even cynicism about governmental institutions in Pennsylvania have been apparent for some time. But until recently, at least, there has been a sense that the judiciary was available to and would preserve and protect the public interest. That confidence is rapidly eroding. To restore it is an immediate and critical priority.”

At the conclusion of its investigations, the Crime Commission will be prepared to share its results with the appropriate legislative committees.

Editor’s Note: On March 12, 1985, the Pennsylvania Supreme Court ruled that the Pennsylvania Crime Commission does have subpoena power and provided a constitutionally permissible procedure for the judicial enforcement of those subpoenas.